



OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

July 14, 2005

ATTORNEY GENERAL'S NOTICE TO ALL LAW ENFORCEMENT OFFICERS RE CLASS SETTLEMENT AGAINST ZYLON FIBER MANUFACTURER

Preliminary approval has been given to \$29 million settlement in a class action suit pending in Oklahoma against Toyobo Company, Ltd and Toyobo of America ("Toyobo"), the manufacturer of Zylon fiber. The settlement was reached between Toyobo and a certified national class of consumers who purchased Second Chance *Ultima*, *Ultimax*, and *TriFlex* bullet proof vests. The settlement does not resolve claims against Second Chance Body Armor, Inc., which has been the target of numerous lawsuits, including a January 2004 consumer fraud action filed by the Arizona Attorney General. Second Chance is now in Chapter 11 bankruptcy, and attempting to sell its assets.

Second Chance recently acknowledged that it is no longer confident that any of its Zylon-based products will perform to expectations for the life of the warranty period. Second Chance's "Safety Notices" have recommended that, "due to a potential for serious personal injury or death," Second Chance's customers should take "immediate steps" to replace all *Tri-Flex* vests and all *Ultima* and *Ultimax* vests, including those with Performance Pacs. According to recent estimates, over 156,000 Zylon-containing vests were sold by Second Chance, thousands of which were sold in Arizona. The Attorney General's Office has urged all Arizona law enforcement officers and their employing agencies to seek replacements for any Second Chance Zylon-containing vests.

Class counsel in the Oklahoma class action have provided the following summary of the benefits of the proposed settlement to Class Members, *i.e.*, purchasers and owners of Second Chance vests containing Zylon, including the *Ultima*, *Ultimax* and *TriFlex* models (even those who received Performance Pacs or replacement Monarch vests from Second Chance):

- A settlement fund of \$29 million plus accrued interest beginning 10 days after Preliminary Approval. The Settlement Fund will be divided among Class Members on a pro rata basis. There will be no reduction for costs of administration, notice or attorney fees as Toyobo has agreed to pay these separately. The amount each officer or agency receives is dependent on the total number of Class Members that participate in the Settlement and submit bona-fide claims. A national notice campaign will be undertaken to inform Class Members of their rights. Each Class Member is free to use the money received from the Settlement Fund in any manner they choose.
- A replacement vest program providing Class Members with the ability to purchase a replacement vest from Armor Holdings Products, L.L.C. ("Armor") at the most favorable negotiated state contract and/or agency commercial prices made available by Armor directly to domestic law enforcement officers. Each replacement Armor vest will come with a five year warranty, and one extra carrier (for a total of 2 carriers). Armor will be responsible for all transaction costs associated with the purchase, sizing and delivery of these vests and will set up an administration process

at its own expense and ensure that trained personnel are available to assist Class Members with the Replacement Vest Option. The decision to purchase an Armor vest under this program must be made within one year from final approval of the Settlement, but the Class Member need not purchase and take delivery of the vest for five years.

- Alternatively, in lieu of their share of the Settlement Fund and in addition to the benefits described above, any Class Member desiring to purchase an Armor vest can elect to receive a non-refundable voucher from Armor worth twenty-five (\$25.00) more than their share of cash from the Settlement Fund to purchase an Armor replacement vest or any other Armor product available from Armor's distributors. For example, the Armor voucher can be used to buy holster, batons, helmets, gloves, etc., from any authorized Armor distributor. Any Class Member who chooses an Armor voucher must do so in the first instance as opposed to receiving cash and use the credit or voucher within five (5) years from the date the Settlement becomes Final.
- Toyobo is also required to instruct its customers to do used vest testing to ensure the products perform as expected for their useful life. Additionally, any attorney fees awarded by the Court will be paid by Toyobo in addition to the \$29 million and thus, will not reduce the size of the Settlement Fund for Class Members.

The settlement arose in the national class action captioned *Lemmings, et al. v. Second Chance Body Armor, et al.*, No. CJ-2004-64, District Court for Mayes County, Oklahoma, in which a class was certified in February 2005, defined as follows:

All persons and entities in the United States and its territories, who have purchased, possess or own a bullet proof vest manufactured by Defendant Second Chance Body Armor, Inc., which contains Zylon®, a fiber manufactured and sold by Defendants Toyobo Company, Ltd., and Toyobo America, Inc. Excluded from the Class are Defendants; Defendants' affiliates, parents and subsidiaries; all directors, officers, agents, and employees of Defendants; any person or entity who timely opts out of this proceeding; and any claims belonging to the federal government. This class does not include or affect present or future personal injury claims.

According to class counsel, any Class Member who previously "opted out" of this case may opt back in. Any Class Member who desires not to participate in the settlement must opt out by **September, 9, 2005**, or the Class Member will be bound by the settlement.

The above settlement was preliminarily approved by the Court in the above matter on July 12, 2005. A "fairness hearing" concerning the settlement will be held on **September 23, 2005**. Parties wishing to object to the settlement must file their objection not later than **September 9, 2005**.

THE ATTORNEY GENERAL'S OFFICE EXPRESSES NO VIEW ON THE ADEQUACY OR FAIRNESS OF THE ABOVE SETTLEMENT. For further information about the settlement, you may visit the settlement website at www.zylonvestclassaction.com or call 1-877-567-2754.